

CENTER FOR DISABILITY ACCESS
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Attorney for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

10CV 2075 WQH POR

MANUEL CORTES,

Plaintiff,

v.

ESSEX CAL-WA, L.P., a California
Limited Partnership, and DOES 1 through
20, inclusive

Defendants.

Case No.:

COMPLAINT FOR DAMAGES FOR
VIOLATIONS OF: FAIR HOUSING
AMENDMENTS ACT OF 1988;
CALIFORNIA'S FAIR HOUSING AND
EMPLOYMENT ACT; UNRUH CIVIL
RIGHTS ACT; CALIFORNIA
DISABLED PERSONS ACT

DEMAND FOR JURY

Plaintiff MANUEL CORTES complains of Defendants ESSEX CAL-WA, L.P.,
a California Limited Partnership, and DOES 1 through 20, inclusive, (hereinafter
referred to as "Defendants") and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is a paraplegic
who uses a wheelchair to ambulate.

2. Defendants are or were at the time of the incident the owners and operators
and/or lessors and lessees of the Mission Hills Apartments located at or about 230-260
Rancho Del Oro, Oceanside, California. Plaintiff rented an apartment from the

ORIGINAL

Vra fax

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1 defendants.

2 3. Plaintiff does not know the true names of Defendants, their business
3 capacities, their ownership connection to the property and business, or their relative
4 responsibilities in causing the access violations herein complained of, and alleges a
5 joint venture and common enterprise by all such Defendants. Plaintiff is informed and
6 believes that each of the Defendants herein, including DOES 1 through 20, inclusive, is
7 responsible in some capacity for the events herein alleged, or is a necessary party for
8 obtaining appropriate relief. Plaintiff will seek leave to amend when the true names,
9 capacities, connections, and responsibilities of the Defendants and DOES 1 through 20,
10 inclusive, are ascertained.

11 **JURISDICTION:**

12 4. This Court has subject matter jurisdiction over this action pursuant to 28
13 U.S.C. § 1331 and § 1343(a) (3) & (a) (4) for violations of the Fair Housing
14 Amendments Act of 1988, 42 U.S.C. § 3601, *et seq.*

15 5. Pursuant to pendant jurisdiction, an attendant and related cause of action,
16 arising from the same nucleus of operative facts and arising out of the same
17 transactions, is also brought under California's Fair Employment and Housing Act,
18 Unruh Civil Rights Act and Disabled Persons Act.

19 **VENUE:**

20 6. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is founded
21 on the fact that the real property which is the subject of this action is located in this
22 district and that Plaintiff's cause of action arose in this district

23 **FACTUAL ALLEGATIONS:**

24 7. The Mission Hills Apartment complex ("Mission Hills") is a housing
25 accommodation, a business, and also contains places of public accommodation, *i.e.*, the
26 rental office and the parking and elements that service that rental office.

27 8. The Plaintiff was a resident of Mission Hills from July of 2009 to January of
28 2010.

1 9. While a resident of Mission Hills, the plaintiff used the rental office on a
2 regular basis for, among other things, paying rent. As required by law, the rental office
3 has a handicap parking space among the parking spaces that serve the rental office. But
4 the defendants made it a regular practice of parking a golf cart in the handicap parking
5 space or required access aisle that served the accessible parking space. This had the
6 effect of both removing the handicap parking space from use by persons with
7 disabilities and blocking the accessible path of travel to the ramp to the rental office.

8 10. The Plaintiff personally encountered the blocked handicap parking
9 space/path of travel on numerous occasions, which condition resulted in difficulty,
10 discomfort and some minor embarrassment to the plaintiff and resulted in the
11 plaintiff being denied full and equal access required by law.

12 11. The plaintiff complained on 5 or 6 occasions to the Defendants but the
13 practice did not stop.

14 12. Because of the ongoing practice of blocking the handicap parking and path of
15 travel at the rental office and the callous disregard of the Plaintiff's rights, the plaintiff
16 chose not to live at Mission Hills any further and moved.

17 **I. FIRST CAUSE OF ACTION: VIOLATION OF FAIR HOUSING**
18 **AMENDMENTS ACT OF 1988 (On behalf of Plaintiff and Against All**
Defendants) (42 USC § 3602)

19 13. Plaintiff repleads and incorporates by reference, as if fully set forth again
20 herein, the allegations contained in all prior paragraphs of this complaint.

21 14. The plaintiff's request that the Defendants change their practice of using the
22 handicap parking space for a golf cart was modest and reasonable request and it was
23 necessary to afford the plaintiff an equal opportunity to use and enjoy his dwelling.
24 The failure to honor this requested accommodation was an act of discrimination.

25 **II. SECOND CAUSE OF ACTION: VIOLATION OF CALIFORNIA'S**
26 **FAIR HOUSING AND EMPLOYMENT ACT (On behalf of Plaintiff and**
27 **Against All Defendants) (Cal Gov § 12920 et seq.)**

28 15. Plaintiff repleads and incorporates by reference, as if fully set forth again

1 herein, the allegations contained in all prior paragraphs of this complaint.

2 16. The plaintiff's request that the Defendants change their practice of using the
3 handicap parking space for a golf cart was modest and reasonable request and it was
4 necessary to afford the plaintiff an equal opportunity to use and enjoy his dwelling.
5 The failure to honor this requested accommodation was an act of discrimination.

6 **III. THIRD CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
7 **RIGHTS ACT** (On behalf of Plaintiff and Against All Defendants) (Cal Civ § 51
8 et seq.)

9 17. Plaintiff repleads and incorporates by reference, as if fully set forth again
10 herein, the allegations contained in all prior paragraphs of this complaint.

11 18. The rental office is a place of public accommodation and subject to the anti-
12 discrimination provisions of Title III of the ADA. The rental office provided parking
13 as one of its facilities, privileges and accommodations and, therefore, was required to
14 provide handicap or accessible parking. By parking a golf cart on the handicap parking
15 space and/or required access aisle, the Defendants removed the required handicap
16 parking space from use by persons with disabilities and rendered the parking in
17 violation of the ADA and the Unruh Civil Rights Act.

18 **IV. FOURTH CAUSE OF ACTION: VIOLATION OF THE CALIFORNIA**
19 **DISABLED PERSONS ACT** (On behalf of Plaintiff and Against All
20 Defendants) (Cal Civ § 54-54.8)

21 19. Plaintiff repleads and incorporates by reference, as if fully set forth again
22 herein, the allegations contained in all prior paragraphs of this complaint.

23 20. The rental office is a place of public accommodation and subject to the anti-
24 discrimination provisions of Title III of the ADA. The rental office provided parking
25 as one of its facilities, privileges and accommodations and, therefore, was required to
26 provide handicap or accessible parking. By parking a golf cart on the handicap parking
27 space and/or required access aisle, the Defendants removed the required handicap
28 parking space from use by persons with disabilities and rendered the parking in
violation of the ADA and the Disabled Persons Act.

1 **PRAYER:**

2 Wherefore, Plaintiff prays that this court award damages and provide relief as
3 follows:

4 1. Damages under the federal and state Fair Housing Acts and the Unruh Civil
5 Rights Act and/or the California Disabled Persons Act. **Note:** A Defendant cannot be
6 held liable for damages under both the Unruh Civil Rights Act and the California
7 Disabled Persons Act and the Plaintiff will make an election at trial depending upon the
8 evidence amassed.

9 2. Reasonable attorneys' fees, litigation expenses and costs of suit, pursuant to
10 the Americans with Disabilities Act, Unruh Civil Rights Act, the California Disabled
11 Persons Act, the Fair Housing Amendments Act and the California Housing Act.


12 Dated: September 29, 2010 CENTER FOR DISABILITY ACCESS

13
14 By: 
15 MARK D. POTTER
16 Attorneys for Plaintiff

17
18 **DEMAND FOR JURY TRIAL**

19 Plaintiff hereby demands a jury for all claims for which a jury is permitted.

20
21 Dated: September 29, 2010 CENTER FOR DISABILITY ACCESS

22
23 By: 
24 MARK D. POTTER
25 Attorneys for Plaintiff

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings and other papers as required by law, as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

MANUEL CORTES

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

9845 Erma Road, Suite 300, San Diego, CA 92131-1084
(858) 375-7385; Fax (888) 422-5191

DEFENDANTS

ESSEX CAL-WA, L.P., a California Limited Partnership, and
DOES 1 through 20, inclusive

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

10CV 2075 WQH

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II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☒ PTF ☒ DEF
- Citizen of Another State ☐ 2 ☐ 2
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3
- Incorporated or Principal Place of Business In This State ☐ 4 ☐ 4
- Incorporated and Principal Place of Business In Another State ☐ 5 ☐ 5
- Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input checked="" type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC 1331
Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

09/29/2010

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

18767

AMOUNT

\$350-

APPLYING IFP

JUDGE

MAG. JUDGE

10-06-10

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via fax

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS018767
Cashier ID: mbain
Transaction Date: 10/06/2010
Payer Name: POTTER HANDY

CIVIL FILING FEE
For: CORTES V ESSEX CAL
Case/Party: D-CAS-3-10-CV-002075-001
Amount: \$350.00

CHECK
Check/Money Order Num: 30572
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.